

STATE OF MICHIGAN
COURT OF APPEALS

JAMES J. BAYS,

Plaintiff-Appellee,

v

CHARTER TOWNSHIP OF WATERFORD,

Defendant-Appellee,

and

ALAN CARPENTER, MARY CARPENTER, and
CYNTHIA HYDE,

Defendants-Appellants,

and

MARGARET J. LONG, LUCILLE
CANTERBURY, FLORENCE L. SMRCINA,
BRAD SHAW, CAREY FRANKE, PATRICK
DONNELLY, MARY DONNELLY, TRACY
MOUSEL, MICHAEL L. HUNT, KENNETH J.
NOWRY, JANET WOHFEIL, CHARLES E.
HANEY, MARK E. SHAY, STEPHANIE E.
SHAY, CHERYL PATRICK, AUTO MAZZA,
PAUL RESZCZYK, MICHELE RESZCZYK,
DOUGLAS HARDIGREE, HARVEY COOPER,
DORIS COOPER, JOSEPH SWEENEY,
MICHELE MCCOWAN, DOUGLAS DUBRISH,
PATRICIA DUBRISH, WILLIAM KING,
BARBARA KING, WILLIAM J. AVENALL, JON
D. COSTELLO, LAUREN M. CHANDLER,
JEFFERY BROWN, ANNE BROWN, DOVER
ROPER, JR., GORDON BRADY, KENNY
BRITTON, WANDA LEACH, JEFFERY WYLIE,
JOS WILFRED GEROUX, WILLIAM P.
GARDINER, KEVIN CIAK, MICHAEL
HUMBERT, SHEILA HUMBERT, WALTER
CEMPURA, ELIZABETH CEMPURA, SCOTT

UNPUBLISHED

April 15, 2003

No. 237782

Oakland Circuit Court

LC No. 2000-025580-CH

JOHNSON, ELIZABETH C. BELISLE, HELEN
ZIMMERMAN, JOHN W. COBB, LINDA R.
COBB, KENNETH MARUASO, RICHARD
SMITH, OLHEN D. ELKINS, DAVID W.
RACINE, DANIEL STEIN, MARY STEIN,
HELEN L. BLACKMAN, SUZANNE M.
NAVARRE, RAYMOND KARPOICZ, JUDITH
A. KARPOICZ, WILMA E. MCKNIGHT,
JACQUELINE DELYON, FRANK LEITHEIM,
MELISSA LEITHEIM, MICHAEL HILL,
CASSANDRA HILL, LOREN FRANCISCO,
JENNIFER HON, ERIC MCMULLEN, HILLARIE
GNIDA, PHILLIP MARTIN, R.E. FRASE, BRIAN
THRIFT, ALYSON THRIFT, ROBERT
MCDOWELL, MARVIN NEILSON, KEITH
OVERTON, MICHAEL I. KOYL, KEVIN
DEYLON, JAMIE DEYLON, DONALD
MATHENY, LINDA MATHENY, JONALYN M.
MONTROY, FRED J. FURTON, GEORGE E.
BROWN, JACK F. RICHARDS, PARIS MILLER,
PAMELA HOWITT, JOHN M. OSWALD, SR.,
PAULO SILVESTRI, SIMONE SILVESTRI,
GREGORY R. THOMAS, GREGORY P.
HEILMAN, JAMES MORROW, JR., CLYDE
HENDERSON, RUTH J. BUTTERFIELD, DAVID
M. HORNE, MARY M. CARDILLO, MARIO F.
CARDILLO, STANLEY J. SOLOCINSKI,
PATRICIA SOLOCINSKI, GEORGE WATTS,
ROBIN PAULSON, DANIEL HUDSON, LISA
HUDSON, CLIFFORD P. MOYSES, SCOTT
NUTTALL, CHERIE NUTTALL, MARIE
GASSER, ROBERT T. WAGNER, KAREN
CODERE, JAMES SULLIVAN, NICOLE KEITH,
PAULA E. BIGLER, DALE KRAWCZYK,
PETER OGG, JANICE OGG, JOSEPH RAMIREZ,
CLARENCE L. BOWREN, JAMES M.
KUSHNER, DAVID M. WALTER, MERLE
COYLE, MARJORIE COYLE, RICHARD
RODRIGUEZ, THOMAS C. DILORENZO,
MARK WIDGER, KIMBERLY WIDGER, PAUL
BONIFACE, ANNE BONIFACE, DAN LAMPE,
MICHAEL CAMPBELL, K.L. LENESCHMIDT,
JOHN ARNOLD RAWLINGS, RAYMOND D.
BAKER, JERRY BURTON, AUDREY BREWER,
SHIRLEY SMITH, A. BARKHOLZ, THOMAS W.
RAGATZ, MATTHEW MICHALSKI, ROBERT
SCHURMAN, JANELLE SPANN, LAWRENCE

RYCZKO, CURTIS YOUNG, DEBORAH
YOUNG, and SHEILA EARNEST

Defendants.

Before: Jansen, P.J., and Kelly and Fort Hood, JJ.

PER CURIAM.

Defendants Alan Carpenter, Mary Carpenter, and Cynthia Hyde appeal as of right the trial court's judgment vesting title in certain property in plaintiff. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

In 1928 the Scott Lake Land Company deeded the easterly ten feet of Lot 14 of the Orchard Bluffs subdivision and certain other property to defendant Charter Township of Waterford to be held in trust for the lot owners of the subdivision. The purpose of the transaction was to ensure that subdivision lot owners would have access to Scott Lake via the land held in trust. Plaintiff purchased Lot 14 in May 1977, and has resided there continuously since that time. Shortly after purchasing the property, plaintiff learned that the easterly ten feet of the lot was held in trust by the Township. Plaintiff determined to claim the strip of property as his own. Plaintiff erected a fence and made improvements to the property. In 2000, Alan Carpenter and Mary Carpenter purchased property in the subdivision, and informed plaintiff that they intended to use the strip of property to gain access to the lake. Plaintiff informed the Carpenters that he owned the property and that they were not allowed to use it. The Carpenters disregarded plaintiff and used the property to gain access to the lake.

Plaintiff filed an action to quiet title, claiming ownership of the strip of property by adverse possession. In addition to the Township and the Carpenters, plaintiff named as defendants all persons who owned property in the subdivision. At trial plaintiff testified that he denied other lot owners permission to use the property, but acknowledged that he gave specific individuals permission to use the property to gain access to the lake. Plaintiff asserted that anyone else who used the property did so without his permission. Several persons testified that they used the strip of property to gain access to the lake. They indicated that they did not seek or obtain permission from plaintiff to do so.

The trial court found that plaintiff established the elements of adverse possession, and granted him title to the strip of property. The trial court found that the undisputed evidence showed that plaintiff possessed the property continuously since 1977, and that his possession was actual, open, and notorious. The trial court acknowledged that the evidence showed that other persons used the property with or without plaintiff's permission; however, no evidence showed that anyone else used the property under a claim of ownership.

An action to quiet title is equitable in nature. We review the trial court's findings of fact for clear error and its conclusions of law de novo. *Killips v Mannisto*, 244 Mich App 256, 258; 624 NW2d 224 (2001). Clear error exists when we are left with a firm and definite conviction that a mistake has been made. *Massey v Mandell*, 462 Mich 375, 379; 614 NW2d 70 (2000).

To establish adverse possession, a claimant must show that his or her possession has been “actual, visible, open, notorious, exclusive, hostile, under cover of claim or right, and continuous and uninterrupted for the statutory period of fifteen years.” *West Michigan Dock & Market Corp v Lakeland Investments*, 210 Mich App 505, 511; 534 NW2d 212 (1995). The doctrine of adverse possession is strictly construed, and a party claiming title by adverse possession must establish the claim by clear and positive proof. *Strong v Detroit & Mackinac Ry Co*, 167 Mich App 562, 568; 423 NW2d 266 (1988). This level of proof is much like clear and convincing evidence. *McQueen v Black*, 168 Mich App 641, 645 n 2; 425 NW2d 203 (1988).

Defendants argue that the trial court erred by concluding that plaintiff established ownership of the disputed strip of property by adverse possession. We disagree and affirm the judgment vesting title to the disputed property in plaintiff. A party cannot establish adverse possession of land owned by a governmental entity. MCL 600.5821. Plaintiff did not attempt to do so in this case. A claim of adverse possession must be hostile to the title of the true owner. *Gorte v Dep’t of Transportation*, 202 Mich App 161, 170; 507 NW2d 797 (1993). The 1928 deed conveyed the property at issue to the Township to be held in trust for the lot owners. The conveyance vested legal title to the property in the beneficiaries, i.e., the lot owners, and not in the Township. MCL 555.5.

Furthermore, we conclude that the trial court correctly found that plaintiff’s use of the property was hostile rather than permissive. Permissive use of property cannot ripen into a claim of adverse possession. *Kipka v Fountain*, 198 Mich App 435, 438; 499 NW2d 363 (1993). The Township held the property in trust for use by lot owners, including plaintiff. However, plaintiff asserted sole ownership of the property against the other lot owners by openly and notoriously occupying the property and treating it as his own. Plaintiff erected a fence to prevent other lot owners from using the property and denied other owners permission to use the property. Plaintiff asserted rights hostile to those of the other lot owners, and announced his intention to claim the property as his own. The trial court did not clearly err by finding that under the circumstances plaintiff’s occupation of the property was hostile rather than permissive. *Dunlop v Twin Beach Park Ass’n, Inc*, 111 Mich App 261, 266; 314 NW2d 578 (1981); *Killips, supra*.

Finally, we conclude that the trial court correctly found that plaintiff proved that his occupation and use of the property was exclusive. The element of exclusivity required to establish adverse possession can be undermined by evidence that others used the property and were not prevented from trespassing. *Dunlop, supra*, 111 Mich App 267. However, this requirement does not extend so far that a party claiming ownership of property by adverse possession must demonstrate that he or she was the only party to have made any use of the land whatsoever during the statutory period. *Pulcifer v Bishop*, 246 Mich 579, 583-584; 255 NW 3 (1929). The evidence showed that plaintiff gave permission to specific persons to use the property from time to time. No evidence contradicted plaintiff’s testimony that if other persons used the property, they did so without his permission. Plaintiff demonstrated that he used the property in a manner consistent with sole ownership thereof. The trial court’s finding that plaintiff demonstrated the necessary exclusivity was not clearly erroneous. *Killips, supra*.

Affirmed.

/s/ Kathleen Jansen

/s/ Kirsten Frank Kelly

/s/ Karen M. Fort Hood